

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3958 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ORIENTAL INSURANCE CO.LTD.

Versus

JESINGBHAIGAGUBHAI KOLI HEIRS OF MAVJI JAYSINGHBHAI KOLI  
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Appearance:

MR UDAY R BHATT for Petitioner  
NOTICE SERVED for Respondent No. 1,10,11  
MR YM THAKKAR for Respondent No. 9  
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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE C.K.BUCH

Date of decision: 16/02/99

ORAL JUDGEMENT(Per:R.K.Abichandani.J)

The appellant insurance company challenges the judgment and award dated 12.6.96 made by the Motor

Accident Claims Tribunal(Main), Bhavnagar awarding a sum of Rs. 1,20,000/- by way of compensation to the claimants for the death of Mavjibhai Jesinhbhai in a vehicular accident that took place on 27.2.1992 as against their original claim of Rs 2,90,000/-.

#. According to the claimants, deceased Mavjibhai was a cleaner in the vehicle in question drawing a salary of Rs. 1,800/- p.m. On 27.2.1992, the deceased was travelling in the vehicle as a cleaner from Sihor to Tansa. The public carrier was being driven by Kershanbhai-present respondent no.8. According to the claimants, it was being driven at an excessive speed rashly and negligently. Another public carrier which was also being driven by its driver rashly and negligently came from the opposite direction and there was a head long collision between the two vehicles. Mavjibhai was injured seriously and died on the spot as a result of this accident. Both the carriers were insured by the same insurance company i.e. the appellant.

#. The Tribunal on the basis of the evidence on record held that the accident had taken place due to the rash and negligent driving of the drivers of both the vehicles which were insured with the same insurance company.

#. On the basis of the evidence on record, the Tribunal assessed the prospective income of the deceased at Rs. 2500/- p.m. and on that basis awarded a sum of Rs. 1,00,000/- for loss of dependency to the parents and a Sum of Rs. 20,000/- for loss of estate.

#. The learned counsel appearing for the appellant strongly contended that the deceased was an unauthorised passenger and that it was not pleaded in the claim petition that he was a cleaner of the said vehicle in which he was travelling. It appears from the material which has been referred to by the Tribunal that it was the claimants' case that Mavjibhai was a cleaner in the said public carrier. In the claim petition it was clearly mentioned that the deceased was travelling in the truck in question. It is also mentioned in the petition that he was earning Rs. 1800/- p.m. It appears that pay slip of Rs. 1800/- was produced at exh.38 on which the Tribunal placed reliance. From the impugned judgment and award it appears that it was not disputed before the Tribunal that the deceased was a cleaner in the truck in question. In the written statement, there was a general defence taken up that he was an unauthorised passenger, but during the proceedings when the claimants put up

their case that the deceased was a cleaner it was hardly disputed. We are inclined to agree with the reasoning of the Tribunal which is based on the relevant material on record including the pay slip exh.38 that the deceased was earning Rs. 1800/p.m. and that at the time when the deceased was travelling in the said public carrier he was working as a cleaner.

#. The learned counsel appearing for the appellant insurance company strongly contended that having regard to the age of the parents of the deceased the multiplier of 10 could not have been adopted and at best a multiplier of 5 should have been adopted by the Tribunal. The age of the deceased was 21 years when he died in the accident. The pay slip exh.38 showed that he was earning Rs 1800/- p.m. His prospective income has been worked out only at Rs. 2500/-, which in our opinion, was a very conservative figure adopted by the Tribunal. On the basis of his salary of Rs. 1800/- p.m. his prospective income would have been much more. The dependency benefit which has been worked out at Rs. 10000/- per year in the context of his monthly income of Rs. 1800/- at the relevant time was, to say the least, much lower than what it should have been. Having regard to this aspect of the matter and the fact that the mother of the deceased who was 65 years of age as stated in the cause title of the petition and who seems to be still living, the conventional amount of Rs. 1,00,000/-, can by no stretch of imagination be said to be excessive. The amount of Rs. 20,000/- which is awarded as the conventional figure also does not call for any interference. The appeal is therefore, summarily dismissed.